

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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REMI LABA,

Plaintiff,

v.

JBO WORLDWIDE SUPPLY PTY LTD,

Defendant/Third-Party Plaintiff.

v.

REMI LABA, MARTIN BERGH, WAYNE
BEBB, IAIN BANNER, ROOIBOIS LIMITED,
NATURALLY OUT OF AFRICA PERFECTLY
NATURAL PTY LTD, NOOA CALIFORNIA,
LLC, and JOHN DOES 1-5,

Third-Party Defendants.
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**ORDER DENYING MOTION TO
DISMISS AMENDED THIRD-
PARTY COMPLAINT**

20 Civ. 3443 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

On July 7, 2022, I granted Defendant's motion to reconsider my order, dated January 26, 2022, dismissing Defendant's counterclaim/third-party complaint, based on new evidence that would cure the previously-noted deficiencies. (ECF No. 193.) The Third-Party Defendants have again moved to dismiss the Amended Counterclaim/Third-Party Complaint. (ECF No. 211.)

The Third-Party Defendants make substantially the same arguments as they did in

their initial motion to dismiss.¹ Although I previously found at least some of those arguments persuasive as to the original counterclaims, I granted Defendant's motion for reconsideration and gave leave to file amended counterclaims/third-party claims because I found, in light of the new evidence presented, amendment would not be futile, *i.e.* it would withstand a motion to dismiss. This is not a finding on the merits.

Accordingly, the motion to dismiss under Fed. R. Civ. P. 12(b)(2) and 12(b)(6) is denied; the allegations of a conspiracy justify jurisdiction and plausibly assert a right to relief. The motion to dismiss for *forum non conveniens* also is denied because the Third-Party Defendants have not shown that South Africa is a more convenient forum, and the allegations that the instant lawsuit was initiated as part of a conspiracy and for an improper purpose, gives me and this forum a strong interest in resolving the case.

The parties shall appear for a status conference, as scheduled, on August 12, 2022, at 10:00 a.m. The Clerk shall terminate ECF No. 211.

SO ORDERED.

Dated: August 8, 2022
New York, New York

/s/ Alvin K. Hellerstein
ALVIN K. HELLERSTEIN
United States District Judge

¹ The Third-Party Defendants also attach a number of exhibits and documents, as well as make arguments going to the merits of the amended counterclaims/third-party claims. All of these fall outside the scope of consideration on a motion to dismiss, which solely tests the sufficiency of the pleadings.